

DANIEL E. LUNGREN
Attorney General

State of California
DEPARTMENT OF JUSTICE



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July 30, 1997

Allan Abshez
Irell & Manella
1800 Avenue of the Stars, Suite 900
Los Angeles, California 90067-4276

SENT BY FACSIMILE AND U.S. MAIL

RE: Mancuso v. Calif. State Coastal Conservancy, et al.
LASC No. BS 040197

Dear Mr. Abshez:

As we discussed by telephone today, the following is the language the Conservancy staff counsel would like to see in Exhibit D to the settlement agreement. I look forward to talking with you at 11:30 A.M. tomorrow about this language.

"Mancuso and Wildman shall permit the Conservancy and its staff, agents employees, contractors, representatives or subcontractors (hereafter "Conservancy") reasonable access to their property adjacent to the easement (hereafter "Property") and the easement in order to facilitate completion of the Cost Analysis identified in the settlement agreement during weekday business hours upon 48 hours facsimile notice from the Conservancy to Alan Abshez. If a designated representative of Mancuso or Wildman is present at the Property at the time of entry, that representative shall accompany the Conservancy during the time it is on the Property. The Conservancy may not use motorized equipment on the Property. The Conservancy shall use all due care and consideration in connection with its activities on the Property and shall comply with all applicable laws. The Conservancy shall immediately repair any and all damage resulting from the act or omissions of the Conservancy relating to the whole or any part of the Property. The Conservancy is advised that, its entry upon the Property, shall constitute agreement to indemnify, defend and hold Mancuso and Wildman and their agents, trustees, staff, contractors,

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subcontractors, guests and invitees harmless from and against any and all expenses, costs, fees, suits, actions, obligations, liabilities and damages (including reasonable attorney fees and costs) proximately resulting from acts or omissions by the Conservancy on the Property. The Conservancy shall not cause or permit in any way any liens or encumbrances upon or relating to the Property or any interest therein as a result of the Conservancy's acts or omissions with regard to the Property. The terms and conditions of access set forth in this letter are valid and binding only as long as the settlement agreement is in effect. These terms are not intended to and shall not limit, in any way, the rights, duties or obligations of the Conservancy, Mancuso or Wildman with respect to the Property or the easement should the settlement agreement be terminated."

Along with this letter, I am also transmitting a draft stipulation and order which would be Exhibit C to the settlement agreement. The staff agrees that it may be much less complicated to have you simply execute a satisfaction of judgment upon execution of the settlement agreement. My understanding is that you will have the information regarding Dan Blocker and El Sol sent to you by facsimile no later than 9:00 A.M. tomorrow morning.

The only documents which remain to be drafted, apart from a satisfaction of judgment should you agree it is preferable, are the quitclaim deeds and the escrow instructions.

Sincerely,

DANIEL E. LUNGREN
Attorney General



PETER H. KAUFMAN
Supervising Deputy Attorney General

cc. Elena Eger

DRAFT ¹²21 --- ^{12/2/92}11/26/97

SETTLEMENT AGREEMENT

I.

PARTIES

This settlement agreement is made by and among the State Coastal Conservancy (hereinafter "Conservancy"), the Department of General Services (hereinafter "Department"), the Mountains Recreation and Conservation Authority (hereinafter "Authority"), Donohue Wildman (hereinafter "Wildman") and Frank Mancuso, Sr. (hereinafter "Mancuso") and their Related Entities^{1/}

II.

EFFECTIVE DATE

The effective date of this Agreement is the date on which it is last executed by a party to this Agreement.

III.

DESCRIPTION OF DISPUTE

This Agreement is made with reference to the following facts:

1. The Conservancy is the owner of a recorded approximately 10 foot wide non-exclusive easement which permits the public the right to pass and repass across the real property located at

1. For purposes of this Agreement, "Related Entities" shall be defined as Mancuso and Wildman's predecessors, successors, assignees, administrators, legal representatives, joint venturers, partners, agents, members, attorneys, officers, directors, employees, shareholders, affiliates, associates, parent entities, subsidiary entities (whether or not wholly owned), and their officers, directors, employees, shareholders and affiliates, and any other representative of Mancuso.

27910 and 27920 Pacific Coast Highway, Malibu, Los Angeles County, California from Pacific Coast Highway to the mean high tide line of the Pacific Ocean. (A copy of that recorded easement is attached hereto and incorporated by reference herein as Exhibit A, hereinafter the "Easement".)

2. Mancuso is the owner of the real property located at 27920 Pacific Coast Highway. A portion of the Mancuso property is burdened with the Easement.

3. Wildman is the owner of the real property located at 27910 Pacific Coast Highway. A portion of the Wildman property is burdened with the Easement. This property is also burdened with a recorded offer to dedicate a portion of the property for public parking purposes. (A copy of that recorded offer to dedicate is attached hereto and incorporated by reference herein as Exhibit B, hereinafter the "Offer".)

4. Mancuso has filed a petition for writ of mandate (Los Angeles Superior Court No. BS 040197, hereinafter the "Action"). This action seeks a writ commanding the Conservancy to set aside a May 16, 1996 decision approving the expenditure of funds for a study of the cost of making the physical improvements necessary to allow the public to pass from Pacific Coast Highway along the Easement to the mean high tide line of the Pacific Ocean.

5. Mancuso alleges in the Action that the Conservancy in rendering this decision violated his due process rights, failed to adequately scope the study, violated statutory notice requirements and the provisions of the California Environmental

Quality Act (hereinafter "CEQA"). The Action also seeks to set aside a Conservancy decision approving the expenditure of funds for a 20 year property management agreement between the Conservancy and the Authority for management of the Easement on grounds the decision was improperly noticed and failed to properly comply with CEQA. Last, the Action alleges that the Conservancy and the Department failed to comply with Public Resources Code section 31107.1.

6. The Conservancy, the Authority and the Department deny that any of their actions described in paragraphs 4 and 5 supra violated Mancuso's due process rights, any statutory rights to notice or any provision of CEQA. The Conservancy and the Department, likewise, deny that they have in any way violated the provisions of Public Resources Code Section 31107.1.

7. On October 24, 1997, the Los Angeles County Superior Court entered a judgment denying Mancuso relief on all causes of action except the one alleging that the Conservancy and the Department failed to comply with Public Resources Code section 31107.1. But for this Agreement, the Conservancy and the Department would appeal this judgment.

8. Notwithstanding the existence of this dispute between the Conservancy, the Authority, the Department and Mancuso regarding the allegations in the Action, all parties ^{2/} to this

2. Wildman has not been named in the action described in this Agreement, however, he believes that if the dispute is not resolved he, too, will become involved in litigation with the Conservancy, the Department and the Authority.

Agreement wish to reach a full and final settlement of all matters, causes of action and claims which have been raised or which could have been raised, now or in the future, and which arise out of the facts set forth in paragraphs III. 1 through 7 of this Agreement and nothing contained herein shall be construed as an admission of liability by any party nor of the validity of any claims or contentions which have been made or which could be have been made.

IV.

TERMS OF THE AGREEMENT

The parties to this Agreement, in consideration of the mutual covenants and agreements to be performed, as set forth below, agree as follows:

1. Dismissal of the Action. Within ten (10) days of the execution of this Agreement, the parties shall file with the Court a stipulation for an order vacating the judgment and dismissing the Action with prejudice. The stipulation shall be in the form of the document attached hereto and incorporated by reference herein as Exhibit C. If the Court does not vacate the judgment and dismiss the Action with prejudice by December 15, 1997, the parties shall have no further obligations under this Agreement.

2. Notice. With respect to any proposed Conservancy action related to the development, enhancement, maintenance, restoration, or closing of public access on, over or across real property located between the first public road and the Pacific

Ocean, the Conservancy shall give the owners of the subject real property, the owners of record of real property located adjacent to the boundaries of the subject property and the owners of record of the real property bordering the adjacent real property ten (10) days direct mail notice of any hearing or meeting in which such proposed action will be considered by the Conservancy. In addition, the Conservancy will give notice of any such proposed action to any individual or entity previously expressing any interest in access on, over or across the subject property. Except where the judgment is not vacated and the Action is not dismissed with prejudice by December 15, 1997, this obligation to provide notice shall survive the termination of this Agreement notwithstanding any other provision hereof.

3. Cost Analysis. The Conservancy shall complete an analysis (hereafter "Analysis") of the cost of constructing and maintaining the physical improvements (access and parking) necessary to allow the public to access and to move from Pacific Coast Highway to the mean high tide line on the Easement (hereafter "Improvements"). Mancuso and Wildman shall permit the Conservancy and its agents and consultants reasonable access to their properties during week day business hours upon 48 hours notice in order to facilitate timely completion of the Analysis under the terms and conditions described in the letter attached hereto and incorporated by reference herein as Exhibit D. By June 30, 1998 or thirty (30) days after the completion of field work necessary to complete the Analysis on the Mancuso and

Wildman properties whichever comes first, the Conservancy staff shall provide Mancuso and Wildman with a progress report on the work that has been accomplished and the work which remains to be performed on the Analysis. That progress report shall be delivered to Mancuso and Wildman or their representatives at a meeting in the Conservancy's offices in which the Conservancy staff shall also provide any final objective results in its possession from the work on the Analysis. By September 30, 1998 or ten (10) days after their receipt of a final report from the Conservancy's consultants with respect to the Analysis whichever comes first, the Conservancy staff shall provide Mancuso and Wildman with copies of that report.

4. Public Access Program Study. The Conservancy shall complete a feasibility study of a public access program for Malibu (hereafter "Access Program"). It is intended that the Access Program study will survey the entire range of public access opportunities in Malibu with a view towards the opening of beachfront properties currently owned by the public (such as Dan Blocker and El Sol) and/or easements either owned by or offered to the Conservancy and other public entities. Though it is acknowledged by Mancuso and Wildman that the Conservancy retains complete discretion in determining what access opportunities shall be included in the Access Program and the standards to be utilized in making that determination, the Conservancy acknowledges that Mancuso and Wildman believe that access opportunities should be selected for the Access Program that have

the potential to provide significant public benefit and can be pragmatically expected to be implemented given available resources. It is expressly understood by the parties, however, that the Conservancy may determine at the conclusion of the study that it is not feasible to open any easement or any of the publicly owned beachfront properties. The study shall take into account the fact, as more fully described below, that the sum of \$987,000.00 plus funds in the Black Tor Account and the California Coastal Commission's Malibu Access Account may be made available through the implementation of this Agreement towards accomplishment of the Access Program. The Conservancy shall provide Mancuso and Wildman with two progress reports concerning the access program feasibility study. One report shall be provided by May 31, 1998 and the other by September 30, 1998. The reports shall indicate what the Conservancy staff has accomplished during the proceeding period and what tasks remain to be accomplished. Those progress reports shall be delivered to Mancuso and Wildman or their representatives at a meeting in the Conservancy's offices in which the Conservancy staff shall also provide any final objective information in its possession from the work on the Access Program.

5. No later than ten (10) days prior to a Conservancy meeting regarding the determinations described in paragraph 6 below, Wildman shall deliver to the Conservancy two complete and fully executed applications which the Conservancy shall be authorized to file with the California Coastal Commission.

Wildman shall be responsible for obtaining and providing to the California Coastal Commission any information which that agency reasonably requests in order to process the applications. The first application shall be to amend Coastal Development Permit No. 81-35 to delete the condition requiring the Offer. The second shall be to amend Coastal Development Permit No. 5-89-1197 ("Black Tor") to modify condition 1(b) to that permit to allow the Conservancy to apply the funds in the Black Tor account to the development and maintenance of public accessways in areas of Malibu apart from Escondido Beach. The Black Tor application shall be accompanied by a document which adequately demonstrates that Wildman has been given the right to seek the amendment on behalf of the beneficiaries of the Black Tor permit. The cost of submitting these permits shall to the California Coastal Commission shall be borne by Wildman and a check payable to the California Coastal Commission in the amount of the fees required by the Commission for processing these applications shall be given to the Conservancy at the time these applications are provided to the Conservancy.

6. Access Program Feasibility and Public Resources Code Section 31404 Determination.

No sooner than January 7, 1999 and no later than January 31, 1999, the Conservancy shall determine whether the Access Program is feasible. No later than thirty (30) days before the hearing at which the Conservancy is to make this determination, the Conservancy staff shall provide Mancuso and

Wildman with its draft staff report, proposed action items and proposed findings regarding the Access Program. If made in writing and received by the Conservancy no later than fifteen (15) days prior to the Conservancy's scheduled meeting, Mancuso shall be entitled to request and receive one 30 day continuance of the hearing at which the Conservancy is to make this determination; provided, however, that if Mancuso requests such a continuance, the Conservancy shall also continue the hearing on the Public Resources Code Section 31404 hearing described below as well. Except as provided below, no sooner than January 7, 1999 and no later than January 31, 1999, the Conservancy, pursuant to Public Resources Code Section 31404, shall determine whether the costs of constructing and maintaining the Improvements to the Easement are currently outweighed by the public benefits of use of the Easement. No later than thirty (30) days before the meeting at which the Conservancy is to make this determination, the Conservancy staff shall provide Mancuso and Wildman with its draft staff report and proposed findings regarding this determination. If made in writing and received by the Conservancy no later than fifteen (15) days prior to the Conservancy's scheduled meeting, Mancuso shall be entitled to request and receive one 30 day continuance of the hearing at which the Conservancy is to make this determination; provided, however, that if a continuance of this hearing is requested by Mancuso, the Conservancy shall also continue the hearing regarding the Access Program determination. If the Conservancy

determines that the Access Program is not feasible, this Agreement shall be terminated automatically and the parties shall have no further obligations under this Agreement except as expressly provided herein. If the Conservancy determines that the Access Program is feasible, it shall determine, pursuant to Public Resources Code section 31404, whether the benefits of public use of the Easement are currently outweighed by the cost of constructing and maintaining the Improvements to the Easement. If the Conservancy finds that the benefits of public use of the Easement currently outweigh the cost of constructing and maintaining the Improvements, this Agreement shall be terminated automatically and no party shall have any further obligations under this Agreement except as expressly provided herein.

7. Access Program. If the Conservancy finds that the Access Program is feasible and that the benefits of public use of the Easement do not currently outweigh the cost of constructing and maintaining the Improvements, the Conservancy shall approve the initiation of a Conservancy project proposal to implement the Access Program, and shall direct the Conservancy staff to conduct, at its sole cost and expense, the analysis required by the California Environmental Quality Act prior to the Conservancy's consideration of the approval or disapproval of the Access Program as an authorized course of action. The Conservancy shall schedule a hearing on approval or disapproval of the Access Program no later than January 31, 2000. If prior to January 31, 2000, the Conservancy determines to approve the

Access Program, the parties shall complete the actions described in paragraph IV.8 hereof. If the Conservancy does not approve the Access Program prior to January 31, 2000, this Agreement shall be terminated automatically and the parties shall have no further obligations under this Agreement except as expressly provided herein.

8. Implementing Actions.

a. If the Conservancy approves the Access Program prior to January 31, 2000, Mancuso and Wildman shall open, within ten (10) days of the Conservancy's determination, escrow by deposition with Chicago title Company ("Escrow Agent") the sum of \$987,000.00 to an interest bearing account, along with copies of the escrow instructions attached hereto as Exhibit E. In the event Mancuso and Wildman fail to open escrow as required by the terms of this paragraph, the time for any party to perform a subsequent obligation under this Agreement shall be stayed until Mancuso and Wildman actually performs said obligation. The escrow shall secure Mancuso and Wildman's agreement to pay the sum of \$987,000.00 in exchange for the Conservancy's relinquishment of the Easement in accordance with the terms and conditions of this Agreement. The Escrow Agent shall close the escrow by paying the sum of principal and accrued interest in the escrow account to the Conservancy or its designated assignee and by delivering to Mancuso and Wildman executed quitclaim deeds in recordable form conveying to each of them, as the case may be, the Conservancy's entire interest in the Easement burdening their

respective properties. (A copy of the form of those deeds is attached hereto and incorporated by reference herein as Exhibits F and G.) Escrow shall close one hundred twenty (120) days after the Department's approval of the relinquishment of the Easement as provided in subparagraph (c) below. In the event that all steps, actions, and deliveries have not been taken to enable the Escrow Agent to close the escrow and deliver the executed quitclaim deeds to Mancuso and Wildman within such one hundred twenty (120) days, the escrow and this Agreement shall be terminated automatically and the principal and accrued interest in the escrow account shall be disbursed to Mancuso and Wildman, any quitclaim deeds in escrow shall be returned to the Conservancy and the parties shall have no further obligations under this Agreement except as expressly provided herein; provided, however, that escrow shall not close in the event that a lawsuit is filed in a court of competent jurisdiction challenging any or all of the California Coastal Commission decisions described in subparagraph (b) below or the decision of the Department described in subparagraph (c) below if those decisions permit the escrow to close within one hundred twenty (120) days of the Department's decision described in subparagraph (c) below. In the event of such litigation, escrow shall be extended until the earlier of: (i) a final non-appealable judgment by a court of competent jurisdiction determining that the California Coastal Commission decisions described in subparagraph (b) below are valid and that the decision of the

Department described in subparagraph (c) below is valid (in which case the escrow shall close as described above) or (ii) a final non-appealable judgment by a court of competent jurisdiction determining that any or all of the California Coastal Commission decisions described in subparagraph (b) below or the Department's decision described in subparagraph (c) below are invalid (in which case the escrow shall be automatically terminated and the principal and accrued interest in the escrow account shall be disbursed to Mancuso and Wildman and any quitclaim deeds shall be returned to the Conservancy.

b. Within ten (10) days of the opening of the escrow described in subparagraph (a) above, the Conservancy shall submit to the California Coastal Commission an application for approval of the following:

- i. Relinquishment of the Easement;
- ii. Transfer of the balance of the Black Tor Account (established by Coastal Development Permit No. 5-89-1197) into an endowment account to be used by the Conservancy to implement the above described alternative access program;
- iii. Transfer of \$82,000.00 in the Coastal Commission's Malibu Access Account into the endowment account to be used by the Conservancy to implement the above described alternative access program.

In addition, the Conservancy shall submit the applications described in paragraph IV.5 of this Agreement to the California Coastal Commission.

c. Within ten (10) days of the opening of escrow described in subparagraph (a) above, the Conservancy shall submit to the Director of General Services a request for approval to relinquish the Easement. The Department, however, shall not act on the Conservancy's request if the California Coastal Commission has not approved the applications described in subparagraph (b).

d. If by June 30, 2000, the California Coastal Commission has not approved the applications described in subparagraph (b) without the requirement of further consideration by Mancuso or Wildman or the Department has not approved relinquishment of the Easement within sixty (60) days of a Commission decision approving relinquishment of the Easement, except as otherwise provided in this Agreement, escrow shall be terminated and the principal and interest in the escrow account shall be disbursed to Mancuso and Wildman and any quitclaim deeds shall be returned to the Conservancy. In addition, this Agreement shall be terminated automatically and the parties shall have no further obligations under this Agreement except as expressly provided herein.

9. It is acknowledged and agreed by the parties that paragraph IV.8 refers to certain decisions and actions of the Conservancy by specific dates and refers to decisions and actions of the California Coastal Commission and the Department. It is

further acknowledged and agreed by the parties that notwithstanding the Conservancy's obligation under this Agreement to make a decision by a specific date, nothing in this Agreement compels the Conservancy, the Commission or the Department to make a decision in any particular way and that each such decision constitutes an exercise of the independent discretion of the Conservancy, the Commission and the Department under the laws of the State of California.

V.

MUTUAL RELEASES

1. The parties agree that upon vacation of the judgment in the Action and filing of the dismissal with prejudice of the Action, all claims and causes of action of any nature whatsoever whether known, unknown, suspected or unsuspected, contingent or fixed arising out of the alleged notice, CEQA, and Public Resources Code Section 31107.1 violations alleged in the Action shall be released, relieved and discharged.

2. The parties expressly understand that California Civil Code section 1542 provides as follows:

"A general release does not extend to claims which the creditor does not know or suspect exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor."

The parties knowingly, voluntarily, intentionally, and expressly waive any and all rights and benefits conferred by section 1542

and agree and acknowledge that this waiver is an essential term of this Agreement, without which the consideration given herein would not have been given.

VI.

REPRESENTATIONS AND WARRANTIES

1. Independent Legal Advice: Each of the parties represents, warrants and agrees that it has received independent legal advice from its attorneys with respect to the advisability of executing this Agreement.

2. No Other Representation: Each of the parties represents, warrants and agrees that in executing this Agreement it has relied solely on the statements expressly set forth herein. Each of the parties further represents, warrants and agrees that in executing this Agreement it has placed no reliance whatsoever on any statement, representation or promise of any other party or any other person or entity not expressly set forth herein or upon the failure of any other party or any other person or entity to make any statement, representation or disclosure of anything whatsoever. The parties have included this clause: (i) to preclude any claim that any party was in any way fraudulently induced to execute this Agreement and (ii) to preclude the introduction of parol evidence to vary, interpret, supplement or contradict the terms of this Agreement.

3. Factual Investigation: Each of the parties represents, warrants and agrees that it has made such investigation of the facts that in any way relate to or arise out of or are connected

in any way with the matters or events which were, or could have been alleged in the Action as it deemed necessary or desirable.

4. No Assignment: Each of the parties represents and warrants that there has been no assignment, transfer, or subrogation of any interest in any claims or causes of action which are the subject matter hereto and which are released by that party pursuant to this Agreement. The parties agree to indemnify and hold each other harmless from any liabilities, losses, claims, demands, costs and expenses (including, but not limited to, attorney fees) incurred by them as a result of any person or entity, including, but not limited to, underwriters and insurance carriers asserting such assignment, transfer or subrogation.

5. Authority: Each of the parties represents, warrants and agrees that it has the full right and authority to enter into this Agreement and that the person executing this Agreement on its behalf has the full right and authority to fully commit and bind such party. The Conservancy represents, warrants and agrees that upon receipt of the approvals from the California Coastal Commission and the Department described in this Agreement, no other consents or authorizations are required to relinquish the Easement to Mancuso and Wildman. The Department represents, warrants and agrees that upon the California Coastal Commission's approvals described in this Agreement, it has the authority to approve the relinquishment of the Easement to Mancuso and

Wildman. These representations and warranties shall survive the close of escrow or termination of this Agreement.

VII.

GENERAL

1. Termination of Agreement and Stay of Obligations to Perform. At any time after June 30, 1998, but no later than five (5) days prior to the Conservancy meeting described in Paragraph IV. 4 of this Agreement, either Mancuso or Wildman may terminate this Agreement at his sole discretion if written notice of that decision to terminate is in the Conservancy's possession no later than five (5) days prior to the Conservancy meeting described in Paragraph IV.4 of this Agreement. Should either Mancuso or Wildman choose to exercise this limited right to terminate, the parties shall have no further obligations under this Agreement except as expressly provided herein. It is expressly understood by the parties that in the event this Agreement is terminated, the Conservancy need not make any finding or take any action contemplated by this Agreement. Should either Mancuso or Wildman choose to exercise the above described limited right to terminate this Agreement and the Conservancy elects to proceed with the determinations described in Paragraphs IV.4 and IV.6 of this Agreement, the Conservancy shall not conduct a hearing with respect to either determination before May 1, 1998. In addition, should litigation commence prior to the opening of escrow and that litigation result in an order or judgment from a court of competent jurisdiction which precludes a party from performing an

obligation under this Agreement, the duty to perform that obligation shall be stayed while said order is in effect: Provided, however, that should a lawsuit commenced prior to the opening of escrow have the effect of preventing relinquishment of the Easement to Mancuso and Wildman before December 31, 2005, Mancuso and Wildman shall have the right in their sole discretion to terminate this Agreement and, if it has been opened, the escrow, by a writing addressed to the Conservancy, the Department and the Escrow Agent. In the event of such a termination, any sums in the escrow account plus accumulated interest shall be returned to Mancuso and Wildman and the quitclaim deeds regarding the Easement shall be returned to the Conservancy.

2. Payment of Litigation and Administrative Costs: The parties agree that each of the parties will bear all of their own fees (including, but not limited to attorney fees) and costs in connection with the Action and with the drafting, execution and implementation of this Agreement.

3. No Admissions: The parties agree and acknowledge that this Agreement represents a settlement of disputed claims and causes of action and that nothing in this Agreement constitutes or shall be construed as an admission of any facts in connection with any claims or causes of action or admission or acknowledgment of the existence of any liability or claim or wrongdoing on the part of any party.

4. Full Integration: This Agreement is the final written expression and the complete and exclusive statement of all of the

agreements, conditions, promises representations and covenants between the parties with respect to the subject matter hereof and supersedes all prior or contemporaneous agreements, negotiations, representations, understanding and discussions between and among the parties, their respective representatives and any other person or entity with respect to the subject matter covered herein. Any amendment to this Agreement must be in writing and must specifically refer to this Agreement and must be signed by duly authorized representatives of each of the parties.

5. Survival of Warranties: All representations and warranties contained in this Agreement shall survive its execution, effectiveness and delivery. It is expressly understood and agreed by the parties that none of the releases set forth herein are intended to or do release any claims or rights arising out of this Agreement or the breach of it.

6. Benefits, Successors and Assigns: This Agreement shall be binding upon and shall inure to the benefit of each of the parties and each of their respective successors and assigns and each of them.

7. Attorney Fees: In any action brought under or pursuant to any of the terms and conditions of this Agreement, the prevailing party in any such proceeding shall be entitled, in addition to any other relief awarded by the Court, to its reasonable costs and expenses, including its reasonable attorney fees incurred in any such action.

8. Forum Selection: Any and all disputes between the parties

which may arise pursuant to this Agreement will be heard and determined before a state court located in Los Angeles County, California.

9. California Law Governs: This Agreement shall be construed and enforced in accordance with and governed by the internal, substantive laws of the State of California.

10. No Presumption From Drafting: Given that all parties have had the opportunity to draft, review and edit the language of this Agreement, no presumption for or against any party arising out of drafting all or any part of this Agreement will be applied in any action relating to, connected with or involving this Agreement and each of the parties will be deemed to have participated equally in the drafting of every provision of this Agreement.

11. Notices: All notices under this Agreement will be in writing and will be delivered by personal service or certified mail to such address as may be designated from time to time by the relevant party and which will initially be as set forth below. Any notice sent by certified mail will be deemed to have been given on the fifth day after the date on which it is mailed. All notices given by personal service will be deemed given when received. Notices will be addressed as follows:

a. If to Mancuso:

Mr. Frank Mancuso
c/o Allan J. Abshez, Esq.
Irell & Manella
1800 Avenue of the Stars, Suite 900
Los Angeles, California 90067

b. If to Wildman

Mr. Donohue Wildman
c/o Jonathan Horne

c. If to the Conservancy, the Authority or the Department:

Peter H. Kaufman
Supervising Deputy Attorney General
P.O. Box 85266
San Diego, California 92186-5266

12. Severability: With the exception of the release provisions of this Agreement, if any other provisions of this Agreement are found to be unlawful, void or for any other reason unenforceable, such provisions shall be deemed severable from and shall in no way affect the validity or enforceability of, the remaining provisions of this Agreement.

13. Headings: The headings to the paragraphs of this Agreement will not be deemed a part hereof or affect the construction or interpretation of the provisions hereof.

14. Counterparts: This Agreement may be executed in any number of counterparts by the parties and when each party has signed and delivered at least one such counterpart to the other party, each counterpart shall be deemed an original and taken together shall constitute one and the same Agreement that shall be binding and effective as to all of the parties.

15. Obligation for Return of Easement and Reimbursement:
In the event the Easement has been reconveyed to Mancuso and Wildman but it is subsequently determined by a court of competent jurisdiction in a final non-appealable judgment that the reconveyance is invalid, Mancuso and Wildman shall take whatever

actions are necessary to restore the Easement to the Conservancy and the Conservancy take whatever actions are necessary to return any sums received from Mancuso and Wildman plus any interest earned on those sums from the date they were received by the Conservancy to Mancuso and Wildman.

16. No Joint Venture or Partnership: No actions or obligations hereunder shall be deemed to create a partnership or joint venture between any of the parties hereto. All actions, findings and applications made by any public agency pursuant to this Agreement is done or made in the exercise of the independent discretion and judgment of such agency.

17. Time of Performance of Obligations: Time is of the essence in this Agreement.

IN WITNESS WHEREOF, the parties hereto have approved and executed this Agreement on the dates set forth opposite their respective signatures.

EXECUTED by the parties as follows:

MANCUSO
FRANK MANCUSO, SR.

1997

By:

Frank Mancuso, Sr.

CONSERVANCY
STATE COASTAL CONSERVANCY

1997

By:

Steven Horn

DEPARTMENT
DEPARTMENT OF GENERAL SERVICES

1997

By:

THE MOUNTAINS RECREATION AND
CONSERVATION AUTHORITY

1997

By:

Joseph Edmiston

1997

DONOHUE WILDMAN

By: Donohue Wildman

EXHIBITS

Exhibit A	Easement Description
Exhibit B	Offer to Dedicate
Exhibit C	Stipulation to Vacate and Dismiss
Exhibit D	Letter Detailing Terms of Access to Mancuso and Wildman Properties
Exhibit E	Escrow Instructions
Exhibit F	Mancuso Quitclaim Deed
Exhibit G	Wildman Quitclaim Deed

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8 SUPERIOR COURT OF THE STATE OF CALIFORNIA

9 COUNTY OF LOS ANGELES

10 CENTRAL DISTRICT
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12	FRANK MANCUSO, SR., an individual,)	BS 040197
13	Petitioner,	(Petition assigned to Judge
)	O'Brien)
14	v.	[PROPOSED] ORDER VACATING
)	JUDGMENT AND DISMISSING
15	CALIFORNIA STATE COASTAL	PETITION FOR WRIT OF
16	CONSERVANCY, an agency of the	MANDATE WITH PREJUDICE
)	
17	State of California, CALIFORNIA	
)	
18	STATE COASTAL CONSERVANCY BOARD,	
)	
19	the governing body of the	
)	
20	California State Coastal	
)	
21	Conservancy, the CALIFORNIA	
)	
22	DEPARTMENT OF GENERAL SERVICES, an	
)	
23	agency of the State of California,	
)	
24	THE MOUNTAINS RECREATION AND	
)	
25	CONSERVATION AUTHORITY, an agency	
)	
26	of the State of California and	
)	
27	DOES 1 through 100,	
)	
28	Respondents.	

24 WHEREAS, The STATE COASTAL CONSERVANCY (hereafter
25 "Conservancy") is the owner of a recorded approximately 10 foot
26 wide non-exclusive easement which permits the public the right to
27 pass and repass across the real property located at 27910 and
28 27920 Pacific Coast Highway, Malibu, Los Angeles County,

1 California from Pacific Coast Highway to the mean high tide line
2 of the Pacific Ocean (hereafter the "Easement").

3 WHEREAS, FRANK MANCUSO, SR. (hereafter "Mancuso") is
4 the owner of the real property located at 27920 Pacific Coast
5 Highway. A portion of the Mancuso property is burdened with the
6 Easement.

7 WHEREAS, Mancuso filed the above entitled petition for
8 writ of mandate (hereafter the "Action"). The action sought a
9 writ commanding the Conservancy to set aside a May 16, 1996
10 decision approving the expenditure of funds for an analysis of
11 the cost of making the physical improvements necessary to allow
12 the public to pass from Pacific Coast Highway along the Easement
13 to the mean high tide line of the Pacific Ocean.

14 WHEREAS, Mancuso alleges in the Action that the
15 Conservancy in rendering this decision violated his due process
16 rights, failed to adequately scope the study, violated statutory
17 notice requirements and the provisions of the California
18 Environmental Quality Act (hereinafter "CEQA"). The Action also
19 seeks to set aside a Conservancy decision approving the
20 expenditure of funds for a 20 year property management agreement
21 between the Conservancy and the Authority for management of the
22 Easement on grounds the decision was improperly noticed and
23 failed to properly comply with CEQA. Last, the Action alleges
24 that the Conservancy and the Department failed to comply with
25 Public Resources Code section 31107.1.

26 WHEREAS, The Conservancy, the Mountains Recreation and
27 Conservation Authority and the Department of General Services
28 (hereafter the "Department") filed an answer denying that any of

1 their actions violated Mancuso's due process rights, any
2 statutory rights to notice or any provision of CEQA. The
3 Conservancy and the Department, likewise, denied in their answer
4 that they have in any way violated the provisions of Public
5 Resources Code Section 31107.1.

6 WHEREAS, On October 24, 1997, this Court entered a
7 judgment denying Mancuso relief on all causes of action except
8 the one alleging that the Conservancy and the Department failed
9 to comply with Public Resources Code section 31107.1.

10 WHEREAS, subsequent to the entry of judgment, the
11 parties hereto along with a third party entered into a settlement
12 agreement. This settlement agreement establishes a framework for
13 the Conservancy and the Department's future consideration of
14 whether the Easement should be opened for public use. It also
15 resolves the notice issue discussed in the Court's judgment to
16 the satisfaction of both the Conservancy, the Department and
17 Mancuso.

18 WHEREAS, at this time, the Court has not issued the
19 writ mentioned in the judgment.

20 WHEREAS, the time for appealing the judgment has not
21 yet run.

22 WHEREAS, the parties to his action wish to avoid
23 further litigation over the issues raised by the Action and to
24 secure the benefits to each party of the settlement agreement.

25 WHEREAS, the parties have determined that the most
26 efficient manner in which to secure the benefits of their
27 settlement agreement would be for this Court to vacate the
28 judgment entered on October 24, 1997 and to dismiss the Action

1 with prejudice vacated and the Court should issue an order
2 dismissing the Action with prejudice.

3 WHEREAS, the parties have stipulated and agreed that
4 each party should bear its own court costs and attorney fees with
5 respect to the Action and the drafting and execution of the
6 settlement agreement.

7 WHEREAS, good cause exists to enter this order,

8 NOW, THEREFOR, GOOD CAUSE APPEARING, IT IS HEREBY
9 ORDERED, ADJUDGED AND DECREED THAT:

10 1. This Court's judgment entered on October 24, 1997 is
11 hereby vacated.

12 2. The above entitled action is hereby dismissed with
13 prejudice.

14 3. Each party shall bear its own court costs and
15 attorney fees.

16 DATED:

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JUDGE OF THE SUPERIOR COURT

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6 Attorneys for Respondents
State Coastal Conservancy and Department of General Services

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA

9 COUNTY OF LOS ANGELES

10 CENTRAL DISTRICT

12 FRANK MANCUSO, SR., an individual,) BS 040197
13 Petitioner,) (Petition assigned to Judge
14 v.) O'Brien)

15 CALIFORNIA STATE COASTAL) STIPULATION FOR ORDER
16 CONSERVANCY, an agency of the) VACATING JUDGMENT AND
17 State of California, CALIFORNIA) DISMISSING PETITION FOR
18 STATE COASTAL CONSERVANCY BOARD,) WRIT OF MANDATE WITH
19 the governing body of the) PREJUDICE
20 California State Coastal
21 Conservancy, the CALIFORNIA
22 DEPARTMENT OF GENERAL SERVICES, an
23 agency of the State of California,
24 THE MOUNTAINS RECREATION AND
25 CONSERVATION AUTHORITY, an agency
26 of the State of California and
27 DOES 1 through 100,
28 Respondents.

29 The undersigned parties hereby stipulate and agree as
30 follows:

- 31 1. The State Coastal Conservancy (hereafter "Conservancy")
- 32 is the owner of a recorded approximately 10 foot wide non-
- 33 exclusive easement which permits the public the right to pass and

1 repass across the real property located at 27910 and 27920
2 Pacific Coast Highway, Malibu, Los Angeles County, California
3 from Pacific Coast Highway to the mean high tide line of the
4 Pacific Ocean (hereafter the "Easement").

5 2. Frank Mancuso, Sr. (hereafter "Mancuso") is the owner of
6 the real property located at 27920 Pacific Coast Highway. A
7 portion of the Mancuso property is burdened with the Easement.

8 3. Mancuso filed the above entitled petition for writ of
9 mandate (hereafter the "Action"). The action sought a writ
10 commanding the Conservancy to set aside a May 16, 1996 decision
11 approving the expenditure of funds for an analysis of the cost of
12 making the physical improvements necessary to allow the public to
13 pass from Pacific Coast Highway along the Easement to the mean
14 high tide line of the Pacific Ocean.

15 4. Mancuso alleges in the Action that the Conservancy in
16 rendering this decision violated his due process rights, failed
17 to adequately scope the study, violated statutory notice
18 requirements and the provisions of the California Environmental
19 Quality Act (hereinafter "CEQA"). The Action also seeks to set
20 aside a Conservancy decision approving the expenditure of funds
21 for a 20 year property management agreement between the
22 Conservancy and the Authority for management of the Easement on
23 grounds the decision was improperly noticed and failed to
24 properly comply with CEQA. Last, the Action alleges that the
25 Conservancy and the Department failed to comply with Public
26 Resources Code section 31107.1.

27 5. The Conservancy, the Mountains Recreation and
28 Conservation Authority and the Department of General Services

1 deny that any of their actions violated Mancuso's due process
2 rights, any statutory rights to notice or any provision of CEQA.
3 The Conservancy and the Department of General Services, likewise,
4 deny that they have in any way violated the provisions of Public
5 Resources Code Section 31107.1.

6 6. On October 24, 1997, this Court entered a judgment
7 denying Mancuso relief on all causes of action except the one
8 alleging that the Conservancy and the Department of General
9 Services failed to comply with Public Resources Code section
10 31107.1.

11 7. Subsequent to the entry of judgment, the parties hereto
12 along with a third party entered into a settlement agreement.
13 This settlement agreement establishes a framework for the
14 Conservancy's future consideration of whether the Easement should
15 be opened for public use. It also resolves the notice issue
16 discussed in the Court's judgment to the satisfaction of both the
17 Conservancy, the Department of General Services and Mancuso.

18 8. At this time, the Court has not issued the writ mentioned
19 in the judgment.

20 9. The time for appealing the judgment has not yet run.

21 10. In order to avoid further litigation over the issues
22 raised by the Action and to secure the benefits to each party of
23 the settlement agreement, the undersigned parties stipulate and
24 agree that the judgment should be vacated and the Court should
25 issue an order dismissing the Action with prejudice.

26 11. The undersigned parties further stipulate and agree that
27 each party should bear its own court costs and attorney fees with
28 respect to the Action and the drafting and execution of the

1 settlement agreement.

2 DATED:

3 DANIEL E. LUNGREN
4 Attorney General

5
6 PETER H. KAUFMAN
7 Supervising Deputy Attorney General
8 Attorneys for the Conservancy, the
9 Department of General Services and
10 the Mountains Conservation and
11 Recreation Authority

12 DATED:

13 IRELL & MANELLA

14 ALAN ABSHEZ
15 Attorneys for Frank Mancuso, Sr.